

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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74-2448

ORIGINAL

B
P/B S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

- against -

MANUEL LE CLERES, a/k/a PAITO, and RAMON GARCIA,

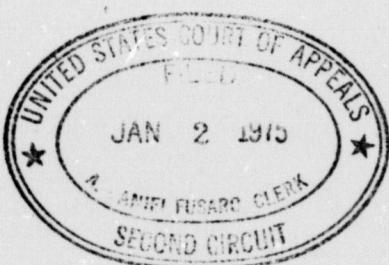
Appellants.

**JOINT APPENDICES IN BEHALF OF
APPELLANTS MANUEL LE CLERES AND
RAMON GARCIA**

EDWARD PANZER

*Attorney for Appellant Ramon
Garcia*

299 Broadway
New York, New York 10007
(212) 349-6128



LOUIS GARCIA

*Attorney for Appellant Manuel
LeCleres*

180 East 161st Street
Bronx, New York 10451
(212) ME 5-4171

(7031)

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DOCKET ENTRIES

11-13-74

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE CANNELLA

74 CRIM. 318

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		Don D Buchwald, AUSA
MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos-all cts.)		264-6424
RAMON GARCIA-1,5,7,9		
RAFAEL BAEZ-1,5,7,9		
RAFAEL MATOS-1,5,		
PEDRO ORTAS-1,3,9		For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(01) Fine,		1/2/74	CCalls	5	
Clerk, 4 1,3 5 2		1/3/74	Thicks		5
Marshal,					
Attorney,					
Commissioner's Costs, 18					
Witnesses 371, 2312, 2313					
Consp. to transp. conceal & sell stolen					
autos. (Ct.1)					
Interstate transp. of stolen autos (2,4,6,8)					
Receiv. conceal & dispose of interstate stolen autos (3,5,7,9)					

DATE	PROCEEDINGS
2-29-74	Filed indictment. Ortas B/F ordered.
4-8-74	Deft MANUEL LECLERES present with atty-pleads not guilty, 10 days for motions, bail fixed at \$10,000 P.R.B., deft to be F/P. Case assigned to Judge Cannella. Tenney, J.
4-8-74	Deft RAFAEL MATOS present no atty- Court directs a plea of not guilty 10 days for motions, bail fixed at \$10,000 PRB unsecured. Deft to be Fingerprinted & photographed. Tenney, J.
4-8-74	Deft RAMON GARCIA present without atty-Court directs a plea of not guilty 10 days for motions, bail fixed at \$10,000 PRB Unsecured. Deft to be F. over

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A

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
4-8-74	Def. RAFAEL BAEZ present without Atty-Court directs a plea of not guilty, 10 days for motions, bail fixed at \$10,000 PRB unsecured, deft to be fingerprinted & photographed. Tenney, J.		
4-16-74	MANUEL LECLERES - Filed notice of appearance by Louis A. Garcia 180 E. 161 St. Bronx, N.Y.		
Apr. 22-74	R. BAEZ - Filed financial affdvt.		
May 1-74	R. BAEZ - Filed notice of appearance by LOUIS R. AIDALA 1250 Broadway NYC 736-8088		
5-2-74	R. MATOS - Filed financial affdvt.		
5-13-74	R. GARCIA - Filed affdvt. & notice of motion to suppress the testimony, to inspect Grand Jury, to dismiss the indictment, to suppress all admissions....		
5-16-74	R. GARCIA) Atty's present, Hearing held on motions to suppress-hearing R. BAEZ) concluded...Denied in part - Dec.Res. in part..Bail cont'd. as to both defts.....Cannella, J.		
5-22-74	Filed Govt's notice of Readiness for trial.		
5-23-74	Filed Govt's memorandum in opposition to motions of R. Garcia and R. Baes to suppress G.J. testimony.		
6-12-74	Filed memorandum & Order. Motion by deft Ramon Garcia for an order suppressing his testimony before the grand jury****is denied....The similar motion by deft Rafael Baez for an order suppressing his testimony before the same grand jury ****is also denied.****Cannella, J..... Mailed notice.		
6-12-74	ALL DEFTS - motion to suppress DENIED in all respects. Trial 7-15-74..Cannella, J.		
6-13-74	R. GARCIA) Filed memo endorsed on motion filed 5-13-74...Motion disposed of in R. BAEZ) accordance with the memorandum and order of this date****Cannella, J.		
6-24-74	Filed affdvt. of D.D. Buchwald, AUSA in support of a writ for N. Ramos.		
7-8-74	Filed transcript of record of proceedings, dated 7-8-74.		
8-22-74	Filed affdvt. of Don D. Buchwald, AUSA in support of a writ.		

- Cont'd on Page 3 -

PROCEEDINGS

DATE	PROCEEDINGS
9-7-74	R. MATOS - Atty. present. Deft withdraws plea of not guilty and PLEADS GUILTY to count 1 only. P.S.I. ordered, sent. on 10-21-74 at 9:30 a.m. Bail cont'd....Cannella, J.
9-19-74	MANUEL LECLERES) RAFAEL BAEZ) Jury trial begun as to all defts before Cannella, J. RAYON GARCIA) PEDRO ORTAS ...)
9-20-74	Trial cont'd.
9-23-74	Trial cont'd.
9-24-74	Trial cont'd.
9-25-74	Trial cont'd.
9-27-74	Trial cont'd.
9-30-74	Trial cont'd...COUNT 5 DISMISSED AS TO GARCIA & BAEZ
10-1-74	Trial cont'd.
10-2-74	Trial cont'd. & concluded Jury Verdict Deft LECLERES Guilty on Cts. 1, 2, 3, 4, 5, 8 & 9 NOT GUILTY 6 & 7 Deft BAEZ-GUILTY on Cts. 1, 7 & 9....Deft GARCIA Guilty on Cts. 1, 7 & 9 Deft ORTAS Guilty 1, 3 & 9...All defts reserve right to make motion at time of sentence....ON 11-6-74 10 a.m. Pm. 35 Bail cont'd as to all deft's... Cannella, J.....
10-8-74	PEDRO ORTAS - Filed following papers rec'd from magistrate, docket sheet, warrant, disposition sheet, notice of appearance and appearance bond
10-22-74	RAFAEL MATOS - Filed Judgment(Atty. John Curley, present) It is adjudged Imposition of sentence is suspended..Deft is placed on probation for a period of THREE YEARS, subject to the standing probation order of this Court...Special Condition: Deft to cease and desist from fraudulent practices upon New York City Welfare Department and deft to make known to that Dept those which have occurred in the past...Count 5 is dismissed on motion of deft's counsel with the consent of the Govt.....Cannella, J.....Ent. 10-23-74-----
11-6-74	MANUEL LECLERES - Filed Judgment (# 74, S 71) Atty. Louis Garcia, present. The deft is committed for imprisonment for a period of FOUR YEARS on each of counts 1, 2, 3, 4, 5, 8 & 9 to run concurrent with each other and FINED \$ 1,000.00 on count 1 only. Non-committed fine.....Cannella, J.....Ent. 11-7-74-----
11-6-74	RAFAEL BAEZ - Filed Judgment(Atty. Louis Aidala, present) the deft is committed for imprisonment for a period of TWO YEARS on each of counts 1, 7 & 9 to run concurrent with each other.....CANNELLA, J.....Ent. 11-7-74-----
11-6-74	PEDRO ORTAS- Filed Judgment(Atty. Eugene Evans, present) the deft is committed for imprisonment for a period of EIGHTEEN MONTHS on each of counts 1, 3 & 9 to run concurrent with each other....Cannella, J.....Ent. 11-7-74-----
11-6-74	MANUEL LECLERES - Filed notice of appeal from Judgment of 11-6-74..Leave to file appeal in forma pauperis is granted...Cannella, J...Copy to U.S. Atty. and mailed to Louis A. Garcia, Esq. 180 E. 161 St. Bronx, N.Y.

----See page 4----

DATE	PROCEEDINGS
11-6-74	RAFAEL BAEZ - Filed notice of appeal from judgment of 11-6-74. Leave to file appeal in forma pauperis is granted. Cannella, J. Copy given to U.S. Atty. and Mailed to Louis Aidala, Esq. 1250 B'Way NYC
11-7-74	RAMON GARCIA - Filed Judgment (Atty. Edward Panzer, present) the deft is committed for imprisonment for a period of TWO YEARS on each of counts 1, 7 & 9 to run concurrent with each other, pursuant to Ti. 18, U.S. Code, Sec. 4208(a)(2)... Bail pending appeal. Cannella, J.... Ent. 11-8-74-----
11-6-74	R. GARCIA - Filed financial affdvt.
11-7-74	RAMON GARCIA - Filed notice of appeal from judgment of 11-7-74. Copy given to U.S. Atty. and mailed to Edward S. Panzer, Esq. 299 B'Way NYC... Leave to file notice of appeal in forma pauperis is granted.... Cannella, J.
11-11-74	Filed transcript of record of proceedings, dated Sept. 19, 20, 23, 24, 1974
11-11-74	Filed transcript of record of proceedings, dated Sept. 25, 27, 30, Oct. 1, 2, 1974
11-12-74	Filed MANUEL LECLERES - Filed notice of motion for bail pending appeal, to modify sentence pursuant to 18:4208(a)(2)... Ret. 11-15-74-----
11-15-74	MANUEL LECLERES - Filed memo endorsed on motion filed 11-12-74... Bail application granted** Bail pending appeal is fixed at \$50,000 personal recognizance bond secured by 10%... Decision is reserved on motion to amend sentence***** Cannella, J.....
11-13-74	PEDRO ORTAS - Filed notice of appeal from Judgement of Nov. 12-74. Copy given to U.S. Atty. & mailed to deft C/o XX Fed. House of Detention 427 West St. NYC
9-23-74	FILED WRIT OF H.C. AD TESTIFICANDUM FOR NORBERTO RAMOS.
9-30-74	FILED WRIT OF H.C. AD TESTIFICANDUM FOR ANGEL VILLANUEVA.
11-22-74	FILED NOTICE OF APPEARANCE FOR PEDRO ORTAS EUGENE TUANS
11-22-74	FILED MEMO OF LAW FOR DEFT. GARCIA

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TRUE COPY
RAYMOND BURGHARDT, ClerkBy *A E Thompson*
Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74CRIM.318

UNITED STATES OF AMERICA

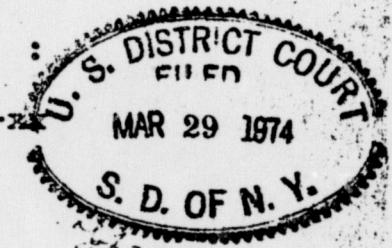
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MANUEL LECLERES, a/k/a Paito, a/k/a
Manuel Ramos, a/k/a Juaquin P. Martinez,
RAFAEL MATOS, RAFAEL BAEZ,
RAMON GARCIA and PEDRO ORTAS,

INDICTMENT

74 Cr.

Defendants.



COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1972, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL MATOS, RAFAEL BAEZ, RAMON GARCIA and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together, and with each other and with other persons to the Grand Jury unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2312 and 2313.

2. It was a part of said conspiracy that the defendants would steal or cause to be stolen motor vehicles in states other than New York and transport said motor vehicles in interstate commerce into the State of New York.

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WITNESS COPY
MAR 29 1974

3. It was further a part of said conspiracy that the defendants would conceal and store the aforementioned stolen motor vehicles at the P & M Auto Repair located at 832 Melrose Avenue, Bronx, New York (operated by the defendant PEDRO ORTAS), or at the R & R Auto Repair, located at 602 Wales Avenue, Bronx, New York (operated by the defendants RAFAEL BAEZ and RAMON GARCIA).

4. It was further a part of said conspiracy that the defendants would alter the appearance of the aforementioned stolen motor vehicles, or obliterate the confidential vehicle identification numbers of said motor vehicles, or replace the public vehicle identification numbers of said motor vehicles with vehicle identification numbers obtained from other vehicles, and thereafter would sell or otherwise dispose of said stolen motor vehicles.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about November 19, 1972, MANUEL LECLERES, the defendant, travelled from Bridgeport, Connecticut, to the Bronx, New York;
2. On or about November 20, 1972, PEDRO ORTAS, the defendant, painted the top of a car;
3. In or about January, 1973, RAFAEL MATOS, the defendant, purchased a damaged 1967 Mercury Cougar;
4. On or about April 15, 1972, RAMON GARCIA, the defendant, sold a 1971 Dodge Swinger; and

5. In or about April, 1973, RAMON GARCIA, the defendant, changed the Vehicle Identification Number of a 1957 Ford Thunderbird.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about November 19, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from Bridgeport, Connecticut to New York, New York, a stolen motor vehicle, to wit, a 1964 Cadillac Sedan, Vehicle Identification No. 64J138193, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT THREE

The Grand Jury further charges:

From on or about November 19, 1972, through on or about March 15, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1964 Cadillac Sedan, Vehicle Identification Number 64J138193, which was a part of, and moving as, interstate commerce from Bridgeport, Connecticut to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about February 6, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from Bridgeport, Connecticut, to New York, New York, a stolen motor vehicle, to wit, a 1967 Mercury Cougar, Vehicle Identification No. 7F93C640793, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT FIVE

The Grand Jury further charges:

From on or about February 6, 1973, through on or about April 17, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL MATOS, RAFAEL BAEZ and RAMON GARCIA, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1967 Mercury Cougar, Vehicle Identification No. 7F93C640793, which was a part of, and moving as, interstate commerce from Bridgeport, Connecticut to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313, and 2.)

COUNT SIX

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The Grand Jury further charges:

On or about March 14, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from East Boston, Massachusetts, to New York, New York, a stolen motor vehicle, to wit, a 1971 Dodge Swinger, Vehicle Identification No. LH23C1R289197, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT SEVEN

The Grand Jury further charges:

From on or about March 14, 1972, through on or about April 15, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL BAEZ and RAMON GARCIA, the defendants, unlawfully, wilfully and knowingly did receive, conceal, store, sell and dispose of a stolen vehicle, to wit, a 1971 Dodge Singer, Vehicle Identification No. LH23C1R289197, which was a part of, and moving as interstate commerce from East Boston, Massachusetts, to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

COUNT EIGHT

The Grand Jury further charges:

On or about December 30, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate

commerce from Bridgeport, Connecticut to New York, New York, a stolen motor vehicle, to wit, a 1957 Ford Thunderbird, Vehicle Identification No. D7FH252614, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT NINE

The Grand Jury further charges:

From on or about December 30, 1972, through on or about August 13, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL BAEZ, RAMON GARCIA and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1957 Ford Thunderbird, Vehicle Identification No. D7FH252614, which was a part of, and moving as, interstate commerce from Bridgeport, Connecticut to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

Stanley Pearl
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

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COURT'S DECISION DENYING SUPPRESSION OF
GARCIA'S GRAND JURY TESTIMONY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

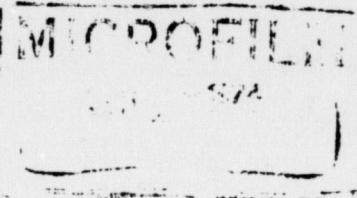


-----X-----
UNITED STATES OF AMERICA

-v-

MANUEL LECLERES, RAMON GARCIA,
RAFAEL BAEZ, RAFAEL MATOS and
PEDRO ORTAS,

74 Cr. 318
(JMC)



Defendants.

-----X-----

CANNELLA, D.J.:

Motion by defendant Ramon Garcia for an order suppressing his testimony before the grand jury which returned the present indictment is denied. The similar motion by defendant Rafael Baez for an order suppressing his testimony before the same grand jury, as well as for an order suppressing certain of his statements to an agent of the Federal Bureau of Investigation, is also denied.

GARCIA

Defendant Garcia was called before the grand jury on March 27, 1974. At that time, he was represented by Ronald Gardner, Esq. Garcia, who is not conversant with the English language, was handed a slip of paper by his attorney (discussed infra) before entering the

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/

grand jury and was also then advised of his constitutional rights by counsel. At all times here involved, Garcia was afforded an interpreter, both during his discussions with counsel prior to entering the grand jury, as well as throughout his grand jury questioning. Upon entry into the grand jury Garcia was advised of his rights by Assistant United States Attorney Buchwald. ^{1/}

It is well settled in this Circuit that the self-incrimination clause of the Fifth Amendment does not prohibit the summoning before a grand jury of one who has become the target of its inquiry and who is a potential defendant. Goldberg v. United States, 472 F.2d 513, 516 n. 4 (2 Cir. 1973); United States v. Mingoia, 424 F.2d 710, 713-714 (2 Cir. 1970); United States v. Masterson, 383 F.2d 610, 614 (2 Cir. 1967), cert. denied, 390 U.S. 954, reh. denied, 391 U.S. 909 (1968); United States v. Winter, 348 F.2d 204, 206-208 (2 Cir.), cert. denied, 382 U.S. 955 (1965); United States v. Carvelli, 340 F.Supp. 1295, 1299 (E.D.N.Y.), aff'd sub. nom. United

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States v. Smith, 464 F.2d 1129, 1136 (2 Cir.), cert.
denied sub. nom., Lauria v. United States, 409 U.S.
1023 (1972). The only question posed on the instant
motion (and that made by Baez) is whether the state-
ments made to that body were the product of a knowing,
intelligent and voluntary waiver of the witness' Fifth
and Sixth Amendment rights.

In this regard, both Garcia and Baez seek to
find comfort in the recent decision of the Court of
Appeals for the Second Circuit in United States v. James,
493 F.2d 323 (2 Cir. 1974). The Court finds such
reliance to be misplaced for several reasons. The
James case involved a defendant who had been incarcerated
he was
ated for 40 days when called before the grand jury and
who was without counsel throughout that period, including
the time of his grand jury appearance. In addition, the
questioning of James continued long after he had asserted
his constitutional right to counsel before the grand jury.
On these facts, the Court of Appeals found the continued
interrogation of James improper.

Unlike James, the present defendants were not

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in custody when they appeared before the grand jury,
they
but rather/appeared pursuant to subpoena. Additionally,
they were not unrepresented, but were represented by
privately retained counsel with whom they consulted
prior to their grand jury questioning and who was
present outside the grand jury room and available for
their consultation throughout the proceedings. On such
facts, James does not apply.

Returning then to the question before the
Court, namely, whether Garcia voluntarily, knowingly and
intelligently waived his privilege against self-
incrimination before the grand jury, the following
further facts are noted. After being advised of his
constitutional rights by Mr. Buchwald, supra, Garcia was
certain
asked certain questions and made/responses; during which
questioning the witness left the grand jury on several
occasions to consult with counsel and, at one point, he
made reference to the slip of paper that his lawyer had
2/
given to him prior to his entry into the grand jury.
(The contents of this note are set out in full at
Footnote 2.) Thereafter, Garcia responded to many more

A 14
-4-

of the questions posed by Mr. Buchwald, during which period he again left the grand jury room on two occasions in order to consult with his attorney, returning after each consultation to answer further questions. ^{3/}

On the foregoing, the Court finds the statements made by defendant Garcia to the grand jury to be the product of a knowing, intelligent and voluntary waiver of his Fifth Amendment privilege against self-incrimination. It further concludes that Garcia made the involved statements after having been fully apprised of his constitutional rights, both by the Assistant United States Attorney and by his own counsel, and that he was afforded adequate opportunity to consult with counsel throughout the proceedings; availing himself of such consultation on several occasions during the course of the questioning. Accordingly, defendant Garcia's motion to suppress his statements before the grand jury is denied.

BAEZ

Defendant Baez was also called before the ~~same~~
grand jury on March 27, 1974, at which time he too was

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RELEVANT PORTIONS OF GRAND JURY TESTIMONY

FOOTNOTES

1/

Q. I wish to advise you that this Grand Jury is investigating alleged violations of the Federal law, including specifically alleged interstate transportation of stolen automobiles and the concealment and sale of automobiles known to have been stolen in interstate commerce. Do you understand that?

A. I have something here that my attorney gave me. He told me not to answer any questions that might incriminate me.

Q. Let me go through this for the record, continuing to advise you of your rights at this time. You have the right not to answer any questions this morning; an absolute Constitutional right to remain silent. And, you should understand that anything you do say could be used against you in a Court of law or other judicial proceedings. And, indeed, any testimony you give can be considered by this Grand Jury and could result in your being charged with certain crimes by this Grand Jury in what is known as an indictment. You have the right to an assistance of an attorney, at least to the extent of having an attorney outside this room with whom you can consult at any time. And, you should simply ask at any time for a recess if you have any questions to that you can go talk with your attorney. If you cannot afford an attorney an attorney will be appointed for you by the Court. . . .

Q. Do you understand what I have said to you this morning? Would you speak up so that the ladies and gentlemen of the Grand Jury can hear your response.

A. Yes, I understand in part.

Q. Do you understand that you yourself are a target of this investigation?

A. Yes, sir.

Q. And that one of the things this Grand Jury may do is charge you with certain crimes?

A. [Nods.]

Q. Is there anything that I have said which you do not understand?

A. Up until now, no.

Q. You understand that you may refuse to answer my questions if you believe that they incriminate you?

A. Precisely, the attorney told me not to answer questions if these were questions that might incriminate me.

Q. Sir, I am going to ask you certain questions. If you believe that they may incriminate you, you should on your attorney's advice, refuse to answer them. If you have a question in your mind, I would urge you to ask us to stop for a moment so that you can consult with your attorney outside. Do you understand what I have just said?

A. Yes Sir.

Garcia Grand Jury Transcript, p.p. 1-3.

2/ Q. Where do you work?

A. 602 Worth Avenue.

,

Q. Is that Wales Avenue?

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-14-

A. [Shakes head without question being interpreted.] Yes.

Q. Do you wish to speak to your attorney before you continue?

A. If I may please be allowed to.

MR. BUCHWALD: Mr. Foreman, if you will temporarily excuse the witness.

[Witness and Interpreter leave room, and are recalled.]

MR. BUCHWALD: May I remind you that you are still under oath.

Q. Have you had an opportunity to speak with your attorney?

A. Yes Sir.

Q. What business are you in at 602 Wales Avenue? What do you do?

A. To fix automobiles, to fix body on the automobile, and to paint cars.

MR. BUCHWALD: Mr. Foreman, may I ask again that you temporarily excuse the witness.

[Witness and Interpreter and Mr. Buchwald leave room.] . . .

Q. Mr. Garcia, I wish to remind you that you are still under oath. Have you again had an opportunity to consult with your attorney?

A. Yes Sir. ,

Q. And have you spoken with him?

A. Yes, through another person.

Garcia Grand Jury Transcript, p.p. 4-6.
Subsequently, the following series of questions
and answers occurred:

Q. Do you know a Mr. Pedro Ortas?

A. [Looking at paper] With my attorney's
advice, I would like to answer -- I'd
like for you please to read this.

MR. BUCHWALD: Might the record reflect that
the witness has handed a small piece of white
paper to the Interpreter, to be read.

INTERPRETER: It says, "Give your name and your
address and then tell him that, with the advice
of counsel, you are not going to answer that
question because, should you answer it, it could
accuse you of a crime."

A. And about Pedro Ortas, that he went once to
work at the garage. . . .

Q. Do you understand what that piece of paper
means?

A. Yes, he told me. That I should give my
address and that any question that should
be put to me and that I didn't think that I
shouldn't answer. What you asked me about
Pedro Ortas, I can tell you about it because
he was there, working for about a month, and
then he left --

Garcia Grand Jury Transcript, p.p. 6-7.

3/

Id. at p.p. 15 and 20.

4/

Baez Grand Jury Transcript, p.p. 1-2.

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CHARGE

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automobile, Bantel testified that Ortas --

THE COURT: That was here in the courtroom?

MR. BUCHWALD: That was live testimony in the courtroom.

THE COURT: It is what he said to Bantel when Bantel was questioning him.

(Jury present.)

THE COURT: Members of the jury, we come to the last stage of this proceeding insofar as it involves the Court and the lawyers.

The rest of the case will be in your hands. This is called the charge. In this portion of the case it becomes my duty to inform you as to the various aspects of the laws involved in this case and I will summarize in effect what I am doing at this time, and in the beginning I will discuss the facts very briefly since the lawyers have agreed amongst themselves that they would do that. Sometimes the Judge marshals the evidence.

In this particular case, the lawyers made a choice that they would marshal the evidence and they have done it very well, and at great length, as you realized after having listened to them yesterday.

I will then discuss various situations that arise as a result of our laws and discuss what evidence is and

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2 what evidence is not and how you evaluate the evidence.

3 I will then define certain terms that appear in
4 these various documents and in the indictment. I will
5 describe to you the law as it applies to the conspiracy
6 charge, and then we will get to the indictment itself and
7 that's the reason for this board, and we will go through the
8 nine counts and I will indicate to you what are the elements
9 necessary in order to convict on these nine counts.

10 And after that, there are a few remarks I make,
11 which have actually nothing to do with the evidence, but
12 have something to do with your duties and from that point
13 on, I will listen to the lawyers for the last time.

14 If they have any exceptions to anything I have
15 said or if they want to suggest anything, I listen to them
16 once more and then I may say something to you after I
17 listen to them. Sometimes I do, sometimes I don't. That's
18 generally the area we are going to be in this morning.

19 At the outset I want to thank both sides in this
20 case, both the United States Attorney and the distinguished
21 counsel that appear here for the defendants, Mr. Garcia,
22 Mr. Aidala, Mr. Panzer and Mr. Evans.

23 They have been of great assistance to the Court.
24 Many times at the side bar, where we discuss law, they have
25 contributed to the conduct of this case, and on my behalf and

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2 on your behalf, I thank them for the manner in which they
3 have conducted themselves. I am sure you will agree with
4 me they have acted as gentlemen, even though there is no
5 question at all that this is an adversary proceeding, and
6 they are in effect fighting that battle that Mr. Panzer
7 was talking about.

8 So that I thank them for you and I thank them on
9 your behalf. I also thank you because you have paid atten-
10 tion to this case and you have listened carefully and I am
11 sure that your verdict, being in accord with your conscience,
12 will be a good one, and that I have no hesitancy in making
13 such judgment at this point.

14 The presentation of the evidence in this case was
15 done through a large number of witnesses, almost entirely
16 produced by the Government.

17 Now, a number of witnesses of course has nothing
18 to do with who should prevail in the case, because if that
19 were the case, there would be no need for a jury. We would
20 simply say the Government produced 22 witnesses, the defendant
21 produced one and therefore the Government prevails. That
22 isn't so. It is the quality of the testimony that's adduced
23 and it is what convinces you regardless of the number of
24 witnesses as to where the truth lies that is prevailing in
25 this case.

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2 Now, the case is very generally presented in this
3 fashion:

4 Four automobile owners came down and testified
5 that their car was stolen. About that there seems to be no
6 dispute although it must be found as a fact in the case
7 before you can proceed at all. It involved four cars, a
8 Cadillac, a Swinger, a Cougar and a T-Bird.

9 Amongst the FBI witnesses there were about six
10 or seven. Three of them were really concerned with photo-
11 graphs which they took. The other three or four, they
12 essentially were talking about things that they seized at
13 various places and the cars that they seized.

14 Some of them talked to the defendants and certain
15 statements were made to them. That's essentially the nature
16 of that.

17 Then there were three policemen and what they
18 talked about was seizing some cars. Then there was one
19 buyer, Rivera. She bought one of these cars. And then
20 there were three persons, two of whom were what I would call
21 accomplices, as a matter of law, and one was a defendant
22 who pleaded guilty and also indicated by the Government
23 witness.

24 Then we have two people from the bank. One
25 about the teller's check and the other about the buyer's

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2 bankbook in that savings and loan bank.

3 And lastly, you have a number of stipulations.

4 Essentially the stipulations concern motor registrations that
5 were filed up in Albany, as well as, I think something about
6 the grand jury testimony that was stipulated to.

7 Now, as you reflect on this, it becomes very
8 clear I think, and almost immediately that there are areas
9 here where these parties do agree. There is no question
10 about it.

11 However, there are very many, many areas where they
12 don't agree. As a matter of fact, they are rather a juxta-
13 position, 180 degree angle, completely opposite one another.

14 This raises questions of fact. Questions of fact
15 could be determined by the Court if the parties desire the
16 Court to do that, but it is not usual in criminal cases.
17 The usual thing is for a jury to pass on questions of fact.
18 That's why you have been chosen here. If you remember you
19 took two oaths here, one to tell the truth, secondly, to
20 decide this case on the evidence and the law.

21 That's the oath that you are fulfilling at this
22 time. To decide this case on the evidence and the law, as
23 it happened here in the courtroom, not something you know
24 from outside or something some lawyer said not under oath.

25 There are a lot of things said by the lawyers here.

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2 not under oath which were really facts they were trying to
3 bring to your attention. Those matters are not really
4 evidence. They were not sworn. Anything the Court says
5 about this, the facts of this case, isn't evidence. As a
6 matter of fact, I was stupid enough to do it once or twice
7 and I immediately pulled back my horns and said, "Wait a
8 minute, I am not supposed to do that, and I don't intend to
9 do it, and forget about what I say about the facts in the
10 case."

11 In other words, the lawyers nor the Court deter-
12 mine the facts in the case. You are the sole and sovereign
13 judges of the facts, just the same as if you were one of
14 those bathrobes that I have on. And you are the ones that
15 are going to determine the credibility of the witnesses. You
16 are the ones that are going to determine where the truth
17 lies; it isn't the lawyers, it isn't the Court, we are
18 trying to assist you but in the last determination the
19 judgment is yours.

20 Now, that being so, you must accept from the Court
21 the law. Once having determined the facts in your own mind,
22 you then must determine what law should apply and you get
23 that from the Court, and it is not your province to question
24 the law, because if you have some question about the law,
25 and sometimes jurors have good questions about the law, they

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2 don't like the law, and sometimes I am inclined to agree
3 with them. But we can't do that, we can't question the
4 law, because if you want to question the law, what you do
5 is you write to your Congressman in federal law, and tell
6 him look, this is a stupid law, change it, because no
7 appellate court could ever determine what you made your
8 judgment on if you use your own law. So you are obliged
9 to use the law that the Court gives to you and apply it to
10 the facts.

11 The grand jury in this District is an accusatory
12 body. They don't try cases. They only listen to the
13 United States Attorney and when he comes in with certain
14 witnesses and certain facts, they determine essentially two
15 things:

16 One number, is it probable that a crime was com-
17 mitted; number two, if it is probable that a crime was com-
18 mitted, who committed it?

19 And when they make a determination as to that, they
20 hand down what is called a true bill, or more familiarly
21 known as an indictment, and if they are not satisfied they
22 simply say no true bill and there is no indictment.

23 The indictment then is an instrument which starts
24 the proceeding; it is the accusation. It is evidence of
25 nothing, only that the grand jury acted on the evidence

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2 before it.

3 At some point in time the defendant then comes
4 into the court and listens. He gets a copy of it. The
5 first thing the Judge does is give him a copy of it? Do
6 you read English? Do you understand English? Are you
7 mentally alert? Do you know what you are doing? Do you
8 have a lawyer? Do you have the advice of a lawyer? All
9 right, here's the charge now.

10 What do you say to this charge? This is the
11 accusation. In this particular case, these defendants
12 plead not guilty, each one of them, as to the charge which
13 appears in this indictment as against them. They are not
14 all named in all the counts except Lecleres. He's named in
15 all the counts. The other defendants are not named in all
16 the counts, so they only pleaded not guilty to the portions
17 which applied to them.

18 Now, we then start on that proposition with this:
19 that every defendant in a criminal case is presumed innocent
20 and the presumption of innocence remains with him unless and
21 until the Government satisfies you by credible evidence
22 beyond a reasonable doubt that the particular defendant is
23 guilty as to a particular charge that you happen to have
24 under consideration.

25 The burden of proof always remains with the

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2 Government. It never shifts to the defendant. The burden
3 remains in the Government throughout the trial, even now
4 while I am talking to you, and in the jury room.

5 And you may not convict the defendant unless and
6 until you feel that the Government has satisfied that burden
7 of proof.

8 In the trial of the case, the defendant is
9 entitled for you to consider that burden of proof not only
10 upon the evidence that is presented by the Government, but
11 upon the cross examination of the witnesses that appear and
12 stipulations it can relate. For example, on the lack of evi-
13 dence in the case, because regardless of any element in the
14 case, and you will recall that I told you the defendant need
15 do nothing in the case. He need not take the stand. He need
16 not produce evidence. He need not produce exhibits. He
17 need not take part in the case. And even though he does
18 that, the fact that he does that may not be used against
19 him.

20 The burden still remains with the Government. No
21 presumption of guilt may arise therefrom, no inference of
22 guilt may arise therefrom.

23 So that in this particular case, for example,
24 one defendant has taken the stand. He has a right to take
25 the stand. When he does take the stand, he is a witness,
just like anybody else. However, he is subject to cross

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2 examination. He has no special privileges, no more than I
3 explained to you when you were being selected as a Government
4 official, or any other witness have any special privilege.
5 They are a witness. You look into them the same as you
6 would any other witness.

7 The way that a case proceeds in court is by the
8 presentation of evidence. The Government presents evidence
9 and if the defendants desire to do so, they present evidence
10 and it is the evidence that you hear in the courtroom that
11 binds you, as I told you once before.

12 Now, evidence may be described in a great
13 number of ways. The first way I will describe it to you
14 would be by its quality and its quantity.

15 The quality of the evidence must be what is called
16 credible evidence. That simply means believable. The quan-
17 tity of the evidence must be beyond a reasonable doubt.
18 That is the amount of the evidence or the quantum of evidence.

19 Now, a reasonable doubt, just as one of the lawyers
20 indicated to you in their remarks, is defined actually by the
21 words themselves, the doubt based upon reason.

22 A reasonable doubt means a doubt that is based
23 upon reason and must be substantial rather than a
24 speculative doubt. It must be sufficient to cause a reason-
25 ably prudent person to hesitate to act in the more important

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2 affairs of his life. Such a doubt can arise from the evi-
3 dence produced during the trial or from the lack of evi-
4 dence produced during the trial.

5 Another way of describing evidence is this way.
6 The evidence in the case is comprised of a number of things.
7 The first I would call your attention to is testimony. That
8 means the witness appears here, he is sworn, and then he
9 describes to you, under oath, what he knows as a result
10 of the use of his senses. It involves any natural inference
11 that flows from that testimony. It involves anything that
12 is brought out on cross examination or redirect examination
13 or recross examination, or anything that the witness has
14 said under oath in your presence.

22 There is a caveat with reference to this, and
23 that is this. Some of the exhibits which were marked in
24 evidence in this case were only marked for identification.
25 They are not in evidence, and you may not speculate upon

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2 what you think would have been in there if you had been
3 allowed to look at it.

4 Only the things that are in evidence may be
5 considered by you.

6 Another thing that is evidence in this way of
7 describing evidence, are stipulations which have been entered
8 into between the parties. That simply means they have
9 agreed among themselves that there is no need to dispute
10 this. We will agree this is a fact and the two things that
11 come to mind are essentially the automobile registrations,
12 which are in file up in Albany and the grand jury testimony,
13 namely, that the person that took that testimony took it
14 accurately and the answers and questions that appear thereon
15 are true and accurate. That is your stipulation.

16 The last thing which I would describe in the
17 particular area is called judicial notice and the Court takes
18 judicial notice of such matters, that are so well known that
19 they require no proof. For example, in this particular case
20 I take judicial notice of the fact that this location up
21 here at 602 Wales Avenue in the Bronx, is within this
22 District and therefore, we have the jurisdiction and you have
23 the right to sit as a jury, or in this kind of a case,
24 because it is within our area.

25 I also take judicial notice of the fact that

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2 Connecticut is a state and it is a separate state from the
3 State of New York. So that if a car, for example, is
4 stolen, as three of these were, in Connecticut, Bridgeport,
5 and one in Massachusetts, and that car is then found in
6 New York, that clearly indicates that there are two separate
7 states involved and one of the requirements under certain
8 sections of the law here, and mostly all of them, I think,
9 all of the indictments, is that interstate commerce be
10 involved, so I take judicial notice that there are such
11 exhibits as the State of Connecticut and the State of
12 Massachusetts and that they are separate from the State of
13 New York.

14 Another way of describing evidence is to divide
15 it into what is called direct evidence and circumstantial
16 evidence.

17 Now, we as laymen, sometimes think that direct
18 evidence is better than circumstantial evidence. Direct
19 evidence is the evidence of the person who is there and has
20 seen something and reports it, an eyewitness. Circumstan-
21 tial evidence on the other hand, is the proof of the chain
22 of facts and circumstances which indicates to you the guilt
23 or innocence of the defendant. The law makes no distinction
24 between the weight to be given to either direct or circum-
25 strial evidence. It requires only that you, after weighing,

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2 all the evidence, must be convinced of the guilt of the
3 defendant beyond a reasonable doubt before he can be con-
4 victed.

5 I might expand a little on circumstantial evi-
6 dence, because a lot of what is concerned with here does
7 involve circumstantial evidence, although there is direct
8 evidence also.

9 But a lot of the things that are involved here
10 require mental operation. For example, knowledge requires
11 mental operation. To act wilfully requires mental opera-
12 tion. To act unlawfully requires mental operation. And
13 to act with specific intent to commit a crime requires
14 circumstantial evidence, because they are mental operations
15 and they cannot be seen at this point, unless you have what
16 you call an X-ray, or some people have a machine that they
17 listen to and they hear the brain, but we don't know what
18 goes on in the person's mind and so circumstantial evidence
19 becomes important.

20 Sometimes circumstantial evidence is more persua-
21 sive than direct evidence. I recall at one time Joe Louis
22 had lost the fight to a man by the name of Max Schmeling.
23 He got a rematch here in New York, at Madison Square Garden.
24 There were thousands of people there. The seats were going
25 for \$100, which at that time was quite a sizeable amount.

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2 This little fellow had a \$100 seat right down near
3 the ringside and he came into the stadium into Madison Square
4 Garden and as he walked down he could see the referee was in
5 the ring and he could see Joe Louis. He could see Max
6 Schmelling. He could see the crowd and so forth, and just as
7 he started to go into his seat, which was about four or five
8 rows behind the ringside, all the people jumped up, and
9 he is a little fellow, and he could not see anything. And
10 the next thing he knew--this was the very famous fight,
11 which I think my contemporaries will recall--Mayor Walker said
12 Joe Louis laid a red rose on the tomb of Lincoln, because in
13 six seconds, Joe Louis had knocked out Max Schmeling.

14 The little guy who was in there getting his way in
15 through the aisle, didn't see that, but when he stood up and
16 finally looked, he saw Schmeling lying flat in the ring.

17 He had no direct evidence that Louis had knocked
18 out Schmeling. It is circumstantial evidence. He had seen
19 the two of them in the ring. He had heard the bell ring.
20 He had seen the crowd rise. He had gotten into the aisle,
21 When he looked, one fellow was lying down flat on his back
22 and the other fellow was standing up.

23 So he could testify from circumstantial evidence
24 that Louis knocked out Schmeling even though he didn't
25 see it.

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2 So circumstantial evidence is not an abuse
3 Circumstantial evidence is recognized by the law then it is
4 used continually. As a matter of fact, in our daily lives
5 we did the same thing. We rely on it very heavily.

6 Now, some examples were given by different lawyers
7 in this case about circumstantial evidence, and they were
8 interesting, and I am sure you listened very carefully,
9 and they were well presented.

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2 My addition to this particular phase of describ-
3 ing circumstantial evidence in addition to what the lawyers
4 have done is this:

5 Another example of how do you know something
6 without actually seeing it. Well, you remember Robinson
7 Crusoe's story. He was on an island because he had been
8 shipwrecked and he rescued some stuff and he brought it on
9 the island, and finally, he found out he was in a very
10 beautiful place. And he was living very well and everything
11 was going great. But he was very sad about having no
12 companionship. And lo and behold, one day he goes down to the
13 seashore and he sees human footprints in the sand.

14 Now, he had not seen a human on the island at
15 all, but he quickly made up his mind and determined from
16 circumstantial evidence that there was a human on the island
17 with him and he sought him out.

18 Well, now, how do you arrive at the conclusion
19 from circumstantial evidence? Suppose Robinson Crusoe,
20 instead of finding footprints on the sand, had found a bunch
21 of banana skins and had found some leaves which appeared to
22 be made into a bed, could he then determine that it was a
23 human who was on the island?

24 Not very well, because that could have been an
25 orangutang, an ape, some sort of animal who had eaten bananas

2 just the same as a human being could. When he saw human
3 footprints which he recognized as human footprints, that was
4 a pretty good piece of circumstantial evidence.

5 So when you are talking about circumstantial
6 evidence, you not only talk about the amount and number of
7 circumstantial evidence pieces, but you also talk about the
8 quality of those pieces, the quality of the circumstantial
9 evidence.

10 In this case, you will have to make a careful
11 examination of it because the Government relies on circum-
12 stantial evidence to some degree, and you will have to
13 examine that circumstantial evidence and determine whether
14 you come to the same conclusion as the Government, or the
15 same conclusion as the defendants.

16 This is a judgment for you to make, because in
17 examining the testimony you will examine all the evidence
18 in the case, both direct and circumstantial, and come to a
19 determination as to where the truth lies.

20 Now, I have described to you different ways of
21 determining what evidence is and the way it is described in
22 different fashions, and now I will indicate to you, because
23 it is important for you to know, what is not evidence, because
24 you may not use in your judgment matters which are not evi-
25 dence. Only matters which are evidence and which have been

2 received in evidence during the course of the trial.

3 Now, the first thing I have already invited your
4 attention to as not being evidence, is the indictment. That
5 is simply a charge. That is the only evidence that it is a
6 charge. It is not evidence of a guilt of any defendant
7 simply because some statement appears in the indictment.

8 The second thing is the comments made by the lawyers
9 and the Court. Anything that was said by the lawyers or
10 by the Court is not evidence. We were not sworn, and there-
11 fore we did not testify in this case.

12 The next thing is questions which were asked and
13 no answer was ever given. You will recall this happened
14 during the course of the trial once, and to put it in a
15 fashion that you will quickly understand, I used the example
16 of when the man was asked when did you stop beating your
17 wife. There is no proof that he ever was beating his wife.
18 It was assumed in the question.

19 A lot of questions that were asked here assumed
20 facts. Unless they have been proven to your satisfaction
21 beyond a reasonable doubt, you may not consider them because
22 in the lawsuit the answers are the evidence, not the ques-
23 tions.

24 In addition to that certain matters were stricken
25 after an answer was made, where some lawyer objected and I

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2 said yes, you are right, and I granted the motion.

3 You are not to consider that portion of it which
4 was stricken.

5 The Court made some comments during the course of
6 this trial which I have already told you once to disregard.
7 I told you at the time they were made to disregard and I
8 tell you now for the last time, to disregard them. Neither
9 the Court's comments, nor the Court's questions, for example
10 are more important than anything else. The Court has no
11 special privilege. I am just an umpire here to make sure
12 that the train runs on the right track.

13 So that essentially you are to disregard any
14 opinion you think the Court has. I have no opinion because
15 I know that your opinion is the one that counts and I don't
16 intend to trespass on that in any fashion whatsoever.

17 The rulings made by the Court on questions, some
18 of you may have kept score on that. Sometimes I decided in
19 favor of the Government, sometimes I decided in favor of
20 the defendants. That means absolutely nothing to you as far
21 as determining what the facts are in this case. Those were
22 rulings of law and do not concern you in any shape or form.

23 Now, how do you evaluate the testimony in the
24 case? Somebody said you know, we don't have a machine for
25 doing this. We depend on you. And that is so. I would

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2 invite your attention to some norms which Anglo-Saxon jurys
3 have used for many years, and American jurys.

4 First I call your attention to the demeanor of
5 the witness. Some of them are very evident. For example,
6 in the case of Perez, one of the lawyers indicated he kept
7 his head down and he did this and did that. That's his
8 demeanor. That is the way he acted. Each witness has his
9 own demeanor. Each witness affects you in some fashion.
10 Just the same as you do in your everyday life, you examine
11 the way he acted on the stand and the way he conducted him-
12 self, whether or not he asked questions to borrow and beg
13 time to do something about the answer he is supposed to
14 give.

15 Essentially what we are saying to you is that you
16 use your common sense. In other words, each one of you ever-
17 day in your life, exercise judgment, make judgments and you
18 do it upon some mental process of your own and you use what
19 you yourself feel is common sense.

20 We expect you as a jury to use that same fine
21 discernment, that same fine care in arriving at a judgment
22 in this case, as you would in matters of great importance
23 to you in your own home, buying a house or even a trivial
24 matter like buying a brush from the Fuller Brush Man, or
25 something like that.

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2 You size him up, you look at the material. You
3 go on your past experience and find out what you know about
4 this and then you make a judgment.

5 Now, in making a judgment, one of the important
6 things that a jury must look into is the interest that a
7 particular party, or a witness, has in testifying, and in
8 this case it is of particular importance because a number of
9 witnesses have been examined very thoroughly before you, you
10 know their background and you know what they have been
11 through and you must determine whether or not you are going
12 to believe them, or if you are going to believe them, how
13 much of it you are going to believe.

14 Now, I indicated earlier who the witnesses were
15 generally, and I will go over that with you once more. The
16 four automobile owners who came down and testified, they have
17 no interest really in the case. Years have gone by and they
18 have gotten their cars back, many of them. They simply
19 came down and said, "Well, the car was stolen." All right,
20 keep that interest in mind that they have as far as they are
21 concerned.

22 The FBI men are all Government employees. They
23 have a job to do. They get efficiency ratings. They have
24 pride in performance, but it is something like evaluating
25 a witness. Simply because a witness has a job, for example,

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2 you can't believe him any more or less. Similarly when you
3 look at an employee, there are many employees who work for
4 people who are not particularly enamoured of their employer,
5 but consider the background of these people, consider their
6 interest and in the light of the interest, you will determine
7 the testimony.

8 As far as three of them are concerned, they came
9 in with some pictures. What about them? What would interest
10 have to do with that essentially?

11 The pictures either show what was there or they
12 don't show what was there. And the seizures, well the
13 matters were either seized or were not seized. There is
14 no contention here as far as I am aware, that these were
15 planted on these people.

16 I am not aware of that. If you think that is the
17 case, then you look into it with that interest in mind.

18 The three policemen, they seized some cars that
19 were on the street, or wherever they were, and brought them
20 into the pound.

21 Miss Rivera, now this was a peculiar witness.
22 Both sides, or at least some of the sides, or one side, the
23 Government, and at least Mr. Panzer, didn't think much of
24 this witness. Frankly, I don't know. I asked her a couple
25 of questions which sort of indicated that I didn't think much

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2 of her. As I told you before, it is not my judgment to
3 make. But think for a minute. Reflect on this witness.
4 What have we really involved here? What could you say the mos.
5 about her that was wrong about her? She didn't have a bill
6 of sale? That bothered you. She knew about this. She
7 went up there and bought a hot car and she knew it was a
8 hot car and she couldn't care less whether she got a bill of
9 sale or didn't. What has that to do with the case as far
10 as the elements of the crime are concerned? You don't
11 have to sell to a legal buyer in order to violate this law.
12 You can sell to an illegal buyer to violate this law.
13 You could sell it to another crook and you would be violatin,
14 the law.

15 So far as Rivera is concerned, even if you don't
16 believe her statement as to how she came to get the car,
17 the fact of the matter is that she did have the car and
18 she did have it for a year and she turned it over to the
19 pound and she didn't get a nickel back, and she paid some mon.
20 for it.

21 And that car was stolen in Connecticut and
22 wound up in New York, bought from somebody up at 602
23 Wales Avenue, whether it was Garcia or somebody else that
24 Garcia said he saw her with outside there.

25 So the car changed hands from the truthful owner

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2 to a person whom you may say really didn't deserve to own
3 the car.

4 What was her interest then in testifying here?

5 Well, the authorities knew that she had the stolen car, the
6 authorities knew that she had turned it into the police,
7 and so they produced her as one of the buyers. Who she
8 bought it from, you will have to determine that. I don't
9 know who she brought it from because I don't make that judg-
10 ment. You will have to make a judgment. Did she buy it from
11 Garcia as she indicated, or did she buy it from some other
12 bird outside that Garcia had nothing to do with? Someone
13 whom she was talking to out there? If that's so, why did
14 Baez wind up with the \$1200 in his account? Do you think it
15 is the Government's position which is justified here that
16 she bought the car and she bought it from Garcia, or do you
17 think that Mr. Aidala's explanation of it that Baez wound
18 up with this check and he could have wound up with it for a
19 perfectly innocent reason, that she might have had some
20 repair works and she gave the money over so the repairs
21 could be paid and she got the rest of the money. These are
22 judgments for you to make and these are interests for you
23 to examine of these various witnesses.

24 Now, the bank people, they came here with records.
25 I don't know what possible interest they could have to

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2 either help or hurt anybody. They just came in with their
3 records.

4 We then get to the three crooks, as they have been
5 described, and I think they are crooks. Two of them are
6 accomplices. They were not named as defendants in the case.
7 One, Matos, was a defendant in the case. Now, these fellows
8 have all kinds of impediments against them. They are
9 informers, they are accomplices, they are seamy characters.
10 Nobody disputes amongst the defendants even, because some of
11 them even said, we are convinced that these three crooks
12 had this conspiracy going and they had the conspiracy going
13 from stealing cars from Connecticut down to New York.

14 There is no question but we had nothing to do with
15 it. That was their thinking, not our thinking. They are
16 three crooks. They are three seamy characters and they are
17 not worthy of belief.

18 Well, let's start in with the concept of an accom-
19 plice. What is an accomplice? What do we mean by an
20 accomplice? An accomplice is one who voluntarily partici-
21 pates in the commission or planning of a crime. There is no
22 question that the Government witness Ramos, Matos and Perez
23 were admittedly participants in the crime charged in the
24 indictment. Matos in addition is a defendant. The testi-
25 mony of an accomplice is admissible since many times crimes

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2 could not be proven unless their testimony was allowed.
3 However, the testimony of an accomplice must be closely
4 examined and weighed with great care. In the federal court
5 defendants may be convicted upon the uncorroborated
6 testimony of an accomplice, even though it is not corroborated
7 by any other evidence. But in order to do so you must
8 believe the testimony of the accomplice to be true beyond a
9 reasonable doubt.

10 In this case, however, the Government has argued,
11 and it is up to you to make a judgment, that there is cor-
12 roboration of these witnesses, not only by the physical
13 evidence that appears in this case, namely, the dent puller,
14 the rivets, the various plates, the book, the papers or
15 documents that have been produced and others of a like
16 nature, and in addition to that the Government position is
17 that the defendant's upon being questioned have, in effect,
18 corroborated these three witnesses.

19 But it is your judgment to make as to whether you
20 will believe them or not. One of them, I think, or maybe
21 more than one of them admitted that he perjured himself. He
22 lied in the grand jury or he lied here, I dont recall which.
23 But any of these witnesses, any of these three or any witness
24 who committed an act of perjury, you must consider his testi-
25 mony with care and scrutinize it more carefully than you

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2 would have an ordinary witness, because he has admitted that
3 he has perjured himself under oath.

4 Some of the statements or some of the witnesses
5 have made what we call inconsistent statements, and on
6 cross examination you heard the lawyers sometimes have the
7 witness say, yes, I did say that but this is my recollection
8 now, and they are inconsistent. Well, as far as inconsis-
9 tent statements are concerned, the testimony of a witness may
10 be discredited or impeached by showing that he previously
11 made statements which are inconsistent with his present
12 testimony.

13 The earlier contradictory statements are admissible
14 only to impeach the credibility of the witness, not to
15 establish the truth of the statement. It is in your province
16 to determine the credibility of the witness, if any, which
17 should be given to that witness who has testified and who
18 has been impeached in this fashion.

19 We are talking at this stage about evaluating
20 the testimony and how do you determine where the truth lies.

21 It is the claim of the Government that the evidence
22 introduced against the defendants indicates that in certain
23 cases some of these defendants made what are called excul-
24 patory statements. In other words, statements which would
25 indicate that they do have nothing to do with this particular

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2 crime or crimes, and to indicate that in effect he was innocent of any charge which is charged in this indictment.

3 Evidence contradicting such statement has also been introduced during the course of the trial. If you find that the 4 exculpatory statements were untrue in that the defendants 5 who made them made them voluntarily with the knowledge that 6 they were false, you may consider the statements as circum- 7 stantial evidence of the defendants' consciousness of guilt. 8

9 You will recall that a number of witnesses were 10 categorized in this fashion by Mr. Buchwald, and, of course, 11 the defendants deny that any of this is exculpatory. They 12 deny that any of these statements in any way can be treated 13 in this fashion, but that is a judgment for you to make. 14

15 And you will determine whether or not any statements 16 are exculpatory, and if they are and they are untrue, 17 then you may determine whether that indicates that there is a 18 consciousness of guilt on the part of that particular defendant. 19

20 The next principle of law which applies in this 21 area is this, in evaluating testimony.

22 There are a number of ladies on the jury and I 23 would give you an example which I think they would understand, 24 although it happens to the men, but they are the ones 25 that finally wind up with this. This concept is this:

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2 If a witness has falsely testified to a material
3 fact, you must disregard that portion of the testimony which
4 you believe to be false. On the other hand, you may accept
5 that part of it which you believe to be true or you may dis-
6 regard the entire testimony of that witness. That is a
7 judgment for you to make.

8 Now, what are the examples I was talking about?
9 Well, if a lady gets up in the morning and she is making
10 omelettes for the family and she puts a rotten egg in
11 amongst four or five other eggs that she is cooking, when
12 she starts to cook that she immediately smells that it is
13 not good and she throws it away, the whole thing. On the
14 other hand, if she burns a piece of toast and there is some
15 brown part on it, why it is not unusual -- I have known it
16 to happen -- that the wife will scrape off the burnt part
17 and the husband's wind up with a piece of toast which has
18 been scraped. That is the way this part true-part false
19 rule works. You can accept all of it, disregard all of it,
20 you can accept part of it and disregard the rest. The part
21 which you know is false, however, you may not accept.

22 Now, some of the witnesses in this case have been
23 convicted of crimes, and I already told you about that at
24 one juncture of the case but I will explain it to you again
25 If a witness has been convicted of a crime, the fact that he

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2 has been convicted of a felony may be brought to your attention,
3 and the purpose of bringing it to your attention is
4 that you may then determine whether or not you believe him
5 from the fact of his conviction.

6 Now, the conviction must be essentially of a
7 matter which has something to do with the believability.
8 In other words, if a fellow is convicted, say, of riding on
9 the wrong side of the street, that doesn't necessarily mean
10 that everybody that rides on the wrong side of the street is
11 a liar. On the other hand, if he is convicted of perjury,
12 then you know that a perjury conviction means that a man is
13 not telling the truth and that is relevant to what you are
14 determining.

15 So you look into the background of the conviction
16 which was testified to, assault in one case as I recall it,
17 and robbery and other crimes of that nature, and then you
18 determine after you know that, how much you are going to
19 believe this fellow, keeping in mind the conviction that you
20 are aware of.

21 Now, ordinarily witnesses may only testify as to
22 what they themselves have learned by the use of their
23 senses. Experts are allowed. In this particular case it
24 was by stipulation. The expert didn't appear in court but
25 the stipulation was that this man was an expert in hand-

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2 writing and he made certain determinations, namely, as I
3 recall it, that Mr. Garcia's fingerprint was not on a par-
4 ticular document or paper.

5 Now, he is allowed to give an opinion like that.
6 You are not bound by that opinion. It is only advisory
7 to you. It is not conclusive, but you may consider that
8 opinion in arriving at your findings in this case.

9 Lastly, on this question of evaluating the evi-
10 dence, some of you jurors have been taking notes. Now,
11 there are some judges that allow that and some judges that
12 do not allow it. I am one that allows it. I feel this way
13 about it:

14 I take notes up here, the lawyers take notes, the
15 Court Reporter has been taking notes and many of us learn and
16 remember better when we write something down than when we
17 hear it or see it, and it is an aid to you alone.

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2 You may not say to another juror, "Look, I got
3 down here that this happened on October 12th and that's it."
4 That's not it. That's only to help you, not to argue with
5 other people about it. But what you can do, and what they
6 have been suggesting to you and what I suggest to you too,
7 now, if you come to a point where someone says "Wait,
8 October 12th, say, well, all right, there is a dispute, my
9 note says October 12th, I'm sure it is that, but let's go
10 out and find out and ask the Judge and have this read" and
11 we will read it to you and then you will know what the date
12 is.

13 You may have to change the note you made. So
14 keep that in mind. The notes are only to help you and not
15 to influence anybody else except yourself, and if there is
16 any question about it, have it read from the minutes.

17 Now, the next phase that I am going into is the
18 definition of a number of terms. There are a number of
19 terms used here which you may be able to understand because
20 some of them are almost the same as you use in every day life
21 but others are not.

22 The first I call your attention to, each charge
23 in effect says that the defendant acted unlawfully, knowingly,
24 and wilfully. Those three words. Unlawful means in this
25 particular case against the Federal statute, and the Federal

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2 statute we are talking about can be described in three or
3 four ways. It is known as the National Auto Security Law.
4 It is also known as the Dyre Act because Mr. Dyre proposed
5 this bill in Congress and it was passed and given his name
6 because he passed it.

7 It is known by a number of names. What we are
8 saying here is that we are talking about a law that was
9 passed by Congress and it is alleged that it is unlawful
10 because of that fact. That is what unlawful means in
11 this context. That is why it is a federal crime.

12 Now, the next one, is knowingly. Well, our
13 whole concept of responsibility in law is based upon the
14 next two words, knowingly and wilfully, because if we didn't
15 have willful power to do or not to do an act, there should be
16 no responsibility on a human being. If what we do we do
17 because we could do nothing else, we shouldn't be responsi-
18 ble for what we do.

19 But we do have the right to do or not to do
20 something and we will it. Therefore, it is because we make
21 the choice that we are responsible. If we make a choice to
22 violate the federal law, then we are responsible for the
23 sanctions that the federal law imposes.

24 Now, what do we mean by knowingly? Knowingly
25 means to act voluntarily and intentionally and not because

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3 of mistake, inadvertance, accident or some other innocent
4 reason. Wilful adds to that concept another element.

5 Wilful means to act knowingly, deliberately and
6 with a bad motive or purpose. It is not necessary that the
7 defendant know that the section of the law is 2312 or 2313.
8 If his conduct offend that section, he then is doing the
9 act wilfully. But the concept that is added here is that he
10 does it with what Romans called the mens rea, the evil mind,
11 the bad purpose, the bad motive.

12 The next word to which I invite your attention
13 I think needs no great explanation, the word "stolen,"
14 because the vehicles must be stolen. As used in the inter-
15 state transportation law, this concept includes all felonious
16 takings of a motor vehicles with the intent to deprive the
17 owner of the rights and benefit of ownership.

18 And so it is the ordinary concept in our every
19 day life of somebody taking something of something that
20 doesn't belong to them from somebody who has not given them
21 permission to do so. That is as simply put as you can do
22 it.

23 By interstate commerce we mean commerce between
24 two states because these vehicles must move in interstate
25 commerce in order for there to be a federal offense.

Now, there are two variations of this in this case.

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2 and I will explain this to you later. I do it now also
3 because I don't think I can repeat it too many times
4 because you must understand this.

5 In the conspiracy charge the vehicle must not
6 only move in interstate commerce, but the defendant must
7 know that it moved in interstate commerce.

8 In the other sections of the law, the other eight
9 sections, four of which involve transportation and four
10 involve what the lawyers have been calling concealment, which
11 is sort of a shorthand. There the vehicle must move in
12 interstate commerce. There is not the additional requirement
13 that the defendant know. A very simple example of this con-
14 cept is this:

15 If you and I agree to pass a red light on 42nd
16 Street and 7th Avenue, we possibly couldn't agree to do that
17 unless we agreed to pass a red light.

18 Now, we could pass a red light without agreeing
19 about it and we would be guilty of the crime of passing the
20 red light, but we would not be guilty of the conspiracy to pass
21 a red light because we did not agree on it beforehand.

22 We must know that we are going to pass a red light
23 in order for someone to conspire to pass a red light.

24 I will touch upon this again when we get to the
25 charges themselves.

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2 What do we mean by moving in interstate commerce,
3 because the indictment here contains this phrase? After a
4 period of time, and depending upon what is done with the
5 motor vehicle, it may no longer be correct to treat it as
6 part of interstate commerce. The length of the time and the
7 persons and the circumstances and the handling of the motor
8 vehicle are all things which you must take into considera-
9 tion.

10 In determining in fact that the motor vehicle
11 was moving in interstate commerce as alleged by the govern-
12 ment, it is recognized, however, that the interstate movement
13 of an automobile does not necessarily cease when the
14 automobile stops and the transportation ends. The sale,
15 the concealment, the storage or other disposition after
16 the transportation made be so tied up with the theft and
17 the transportation as to constitute the final step of a
18 continuous unlawful movement.

19 Now, the next definition I would invite your
20 attention to is the definition of conspiracy, and this is
21 a law that was passed by Congress also.

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2 This law says, insofar as it applies to our
3 case:

4 "If two or more persons conspire to commit any
5 offense against the United States and one or more of such
6 persons do any act to effect the object of the conspirac
7 each is guilty of the conspiracy."

8 I will define conspiracy law at a later time,
9 but this is the definition of conspiracy as passed by Con-
10 gress and it defines what a conspiracy is.

11 Now, the government doesn't charge that everybody
12 in this case did everything that constituted the crime.
13 Certain people did one thing, and other peole did another
14 thing, and the government doesn't contend that any particular
15 individual did everything as far as each of the crimes is
16 concerned.

17 Where, as it is here, two or more persons are
18 charged with the commission of a crime or crimes, the guilt
19 of one defendant may be established without proof that all
20 the defendants perpetrated every act constituting the offense
21 charged. However, you must give separate consideration to
22 each individual defendant and to each separate charge against
23 him. Each defendant is entitled to have his case determined
24 separately from all other defendants.

25 In this regard, the fact that a co-defendant

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2 pleads guilty is not evidence of the guilt of any other
3 defendant, or that the crimes charged in the indictment were
4 in fact committed.

5 The guilt or the innocence of the defendant on
6 trial must be determined solely upon the evidence introduced
7 at the trial.

8 When I come to discuss the substantive counts
9 which are in this case, namely, the odd and even ones, 2,
10 4, 6 and 8; and 5, 7 and 9, and there is one other charge,
11 the first one, conspiracy, with reference to Count number 5,
12 which was discussed by the lawyers, I have dismissed that
13 as to the defendants Baez and Garcia, and I did that as a
14 matter of law. It doesn't help you in finding the facts.

15 There is still one defendant in this charge and
16 that's the defendant Lecleres.

17 So that when there are more than one defendant,
18 essentially, what I am saying is that each one doesn't have
19 to do everything that's charged, they can do different
20 things.

21 Then there is another concept involved in this
22 which is called aiding and abetting. It is not necessary
23 that the defendant Lecleres or Baez or Garcia or Ortas
24 personally did every act charged. A federal statute provides
25 as follows:

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2 "Whoever commits an offense against the United
3 States or aids, abets, counsels, commands, induces or
4 procures its commission, or whoever wilfully causes an act
5 to be done which if directly performed by him or another
6 would be an offense against the United States, is guilty of
7 a crime."

8 Well, there is no precise rule as to what consti-
9 tutes aiding and abetting. It is enough that a defendant in
10 some manner associates himself with the illegal venture, that
11 he participates in it, is something that he wishes to bring
12 about, or that he seeks by his action to make it succeed.
13 The one who aides or abets another in the commission of a
14 crime is equally guilty with the person who actually and
15 physically commits it.

16 Therefore, if you find beyond a reasonable doubt
17 with respect to any count of the indictment in which he is
18 named that a particular defendant committed the crime charged
19 or that he aided and abetted another in its commission, you
20 may find that he is guilty of that offense.

21 There is an area of the law which concerns:

22 What happens when you find someone and he has some
23 stolen property in his possession? How do you rationalize
24 what happens as a result of that? What conclusions can you
25 come to?

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2 The possession of a motor vehicle recently stolen
3 if not satisfactorily explained is a circumstance from which
4 you may reasonably draw the inference that the person in
5 possession knew that the motor vehicle had been stolen. The
6 term "recently" is a relative term which has no fixed meaning.

7 Whether a motor vehicle may be considered as
8 recently stolen, depends upon the facts and circumstances
9 shown by the evidence. The longer the period of time since
10 the theft, the weaker the inference which may be drawn from
11 an unexplained possession.

12 If you find from the evidence beyond a reasonable
13 doubt that the motor vehicle described in the indictment
14 was stolen, and that while recently stolen, the motor
15 vehicle was in the possession of the defendant under con-
16 sideration, you would be justified in drawing from these
17 facts the inference that the defendant had knowledge that
18 it was stolen, unless the possession of the recently stolen
19 motor vehicle was satisfactorily explained by other facts
20 and circumstances in the evidence.

21 Now, the possession doesn't actually have to be
22 actual possession. The possession described can be construc-
23 tive possession. Actual possession is where you physically
24 hold something and are able to control it, like I control
25 this glass at this time. I have actual possession of it.

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7 Now, I don't have it actually before me here and
8 I don't have it in my hand, I therefore do not have actual
9 possession of it, but I have constructive possession of it,
10 because all I have to do is to say to my law clerk, "Bring
11 the book over here," and he brings the book over here, and
12 while he has it, he has actual possession, although he is
13 not even the owner.

21 ||| What is the importance of that in this case?

22 Well, if you believe the testimony of the so
23 called crooks, they were told by Lecleres, for example, to
24 do this and to do that with the cars. Now, many times they
25 did not physically turn the car over to him and many times

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2 they did not actually hand it over to him, but he directed
3 it. For example, as I recall it, and this is subject to
4 your finding, one time when they came with the car, he said
5 to the man that brought the car, bring it over to the
6 Cortlandt store. Now, that's possession of Lecleres, even
7 though he wasn't in the car and he wasn't driving the car,
8 since he had the right to exercise dominion and control over
9 it, and he did in fact exercise dominion and control over it,
10 he has possession.

11 And then you may consider this rule which I was
12 just speaking about, what the effect of that is.

13 Now, what is a conspiracy? This is the law of
14 conspiracy now, because this is the first count of the
15 indictment which charges a conspiracy. And it charges all
16 of the four persons that are before you here as well as the
17 witness Matos. You don't have to make a judgment on Matos.
18 He's already pleaded. Your judgment will concern the four
19 defendants that we have here. And so what is this first
20 charge we are talking about? What is the law concerning it?

21 Actually, the word defines itself, if you under-
22 stand Latin, and since most of you don't, I presume, conspiracy
23 comes from the Latin word conspirare. Con- means with,
24 spirare, which is a Latin word, means to breathe. So what
25 we are saying is people that breathe together. There is a

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2 sense of secrecy about it. Something like football players
3 in a huddle and they don't want the other fellows to know
4 what they are doing, they are huddled up there and they are
5 conspiring the next play. It's this breathing together.

6 Now, a conspiracy is a combination of two or
7 more persons to accomplish an unlawful purpose or an unlawful
8 purpose by unlawful means. While it involves an agreement
9 to violate the law, it is not necessary that the persons
10 charged meet together, enter into an express or formal
11 agreement, or that they state in words or writing what the
12 scheme is or how it is to be effected.

13 It is sufficient to show that they tacitly came
14 to a mutual understanding to accomplish an unlawful act.
15 Such an agreement may be inferred from the circumstances
16 and the conduct of the parties, since ordinarily a conspiracy
17 is characterized by secrecy.

18 In determining whether a conspiracy existed,
19 you should consider the actions and the declarations of all
20 the alleged participants. Mere association does not establish
21 a conspiracy, nor is knowledge of a conspiracy alone,
22 without participation therein, sufficient to constitute
23 membership.

24 What is necessary is that the defendant under
25 consideration participates with knowledge of at least some

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2 of the purposes of the conspiracy and with the intent to aide
3 in the accomplishment of the unlawful end. He cannot be
4 bound by the acts or declarations of another participant
5 until it is established to your satisfaction beyond a
6 reasonable doubt that a conspiracy existed and that he was
7 one of the members.

8 To be a member of the conspiracy a defendant need
9 not know all the other members nor all the details of the
10 conspiracy, nor the means by which the objects were to be
11 accomplished.

12 Each member of the conspiracy may perform separate
13 and distinct acts. It is necessary, however, that the govern-
14 ment prove beyond a reasonable doubt that the defendant was
15 aware of a common purpose and was a willing participant with
16 the intent to advance the purpose of the conspiracy. One
17 who knowingly and wilfully joins -- and you will recall I
18 defined those terms for you-- an existing conspiracy is
19 charged with the same responsibility as if he had been one
20 of the instigators of it. The extent of the defendant's
21 participation is not determinative of his guilt or innocence.

22 A defendant may be convicted as a conspirator
23 even though he plays a minor part in the conspiracy. His
24 financial stake, if any, in the venture is a factor to be
25 considered in determining whether a conspiracy existed and

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2 whether he, the defendant, was a member of it.

3 If it is established beyond a reasonable doubt
4 that a conspiracy existed and that the defendant was one of
5 its members, then the acts* and declarations of any other
6 member of such conspiracy in or out of the defendant's
7 presence, done in furtherance of the object of the conspiracy
8 and during its existence, may be considered as evidence
9 against such defendant.

10 When persons enter into an agreement for an
11 unlawful purpose they become agents of one another. However,
12 statements of any conspirator which are not in furtherance of
13 the conspiracy or made before it existed or after it termin-
14 ated may be considered only as evidence against such
15 particular individual.

16 It is not necessary that all of the overt acts
17 charged in the indictment were performed. One overt act is
18 sufficient. An overt act means any act committed by one or
19 more of the conspirators to accomplish a purpose in the
20 conspiracy. It need not be a violation of the law and the
21 other conspirators need not join in it or even know about it.
22 It is necessary only that such act be in furtherance of the
23 object of the conspiracy.

24 An example I gave you of that is, for example,
25 if I conspired with my law clerk and I am sure he is not

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2 not aiding and abetting me at this time to rob a bank, and I
3 say, "All right, I will meet you there with a car tonight,
4 at such and such a corner in front of the bank and you go
5 to the 5&10 and get a flashlight so we can see what we are
6 doing, and get a crowbar," and he goes to the hardware store
7 and he buys a crowbar and buys a flashlight, neither of
8 those acts are illegal. Anybody can go in the 5&10 and buy
9 a flashlight or go in a hardware store and buy a crowbar.

10 But when we have the agreement to go and rob
11 the bank and we are going to use these in furtherance of
12 robbing the bank, that overt act is sufficient to constitute
13 the completion of the conspiracy.

14 And that's all the overt act means. It doesn't
15 have to be an illegal act, it may be an innocent act. And
16 the government doesn't have to prove one overt act for each
17 defendant, not at all. Any one of them could commit the
18 act.

19 So now we come down -- I have explained to you
20 the definitions in the law and now we are going to go into
21 the indictment and see what you have to have proved to you
22 before you can convict these defendants.

23 This, of course, must be by credible evidence
24 beyond a reasonable doubt, so if you put that diagram up
25 there -- does anybody want a five minute recess at this time?

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2 (No response.)

3 Well, the indictment I am holding in my hand,
4 and you are going to get a copy of it, the forelady will get
5 it and then everyone of you can look at it, because the rea-
6 son we are giving it to her is when you get all through,
7 alongside of each charge you can write your finding, guilty
8 or not guilty, it will be easier for you to report the
9 verdict, because as each one is named in the count it is
10 in here.

11 This is the count the grand jury acted on. The
12 first count which is starting with the first page describes
13 the conspiracy count.

14 Now, the indictment charges in the conspiracy
15 count that the violations of the law which we are talking
16 about are sections 2312 and 2313 of Title 18, and that
17 is the subject of the conspiracy. This is what they were
18 conspiring to violate according to the charge.

19 And 2312, insofar as it applies to this case,
20 reads as follows -- it is very short:

21 "Whoever transports in interstate commerce a
22 motor vehicle knowing the same to have been stolen shall be
23 guilty of a crime."

24 In the second section -- those are the even counts
25 by the way, in this indictment, 2, 4, 6 and 8 -- and the other

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2 one is 2313:

3 "Whoever receives, conceals, stores, barters,
4 sells or disposes of any motor vehicle moving as, or which
5 is a part of, or which constitutes interstate commerce,
6 knowing the same to have been stolen is guilty of a crime."

7 And those are the odd numbers. The shorthand
8 used by the lawyers, and I think Mr. Garcia particularly,
9 was "concealing" and so when I use the word "concealing,"
10 I am not only using the word "concealing," but I am using
11 the rest of the words that are in the statute.

12 Now, the government doesn't have to prove each
13 one of these. If the government proves any one of them,
14 receiving or concealing or storing or bartering or selling
15 or disposing, that is sufficient to constitute the crime
16 in 2313. I will explain that to you when we come to the
17 specific numbers in this odd-numbered count.

18 We are talking now about the first line on there
19 which says "Count 1, conspiracy to violate Sections 2312
20 and 2313" and that names all the defendants, Lecleres,
21 Baez, Garcia and Ortas.

22 Now, what do you have to do in order to find the
23 defendant guilty on this charge?

24 WELL, we will go through the various elements
25 that are in the indictment and you must find each one of

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2 these by credible evidence beyond a reasonable doubt.

3 If you cannot find each one of them, and you
4 find most of them, but not one or all or some of them have
5 been proven, then if you find that that's the case, that one
6 or more or all of them have not been proven then you must
7 acquit the defendant.

8 If you find that the government has proven each
9 one of these elements by credible evidence beyond a reasonable
10 doubt, it is then your obligation to convict the particular
11 defendant you are considering.

12 You will recall I told you you must consider each
13 charge separately. Make a judgment on each charge, and each
14 defendant separately, each one of them is entitled to his own
15 consideration based on the evidence as it applies to him,
16 and you will consider his case and consider each one separate.

17 Now, the first thing you must find is that it
18 happened from on or about January 1st to the filing of the
19 indictment, which is --what date is the filing of the
20 indictment?

21 MR. BUCHWALD: March 29, 1974.

22 THE COURT: March 29, 1974.

23 I am putting on the back of this:

24 "Filed March 29, 1974."

25 Now, that doesn't mean that the government has to

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2 prove that it was over that whole period, but it must be in
3 between those two dates. So that that's the first thing
4 you have to find.

5 Then the next thing is that it is in the Southern
6 District of New York and I have already told you that I have
7 taken judicial notice of the fact that these locations that
8 were described in this testimony up in the Bronx and so forth
9 are within the Southern District of New York.

10 Then it names the defendants and then it uses
11 those three words that I was talking about to you:

12 Unlawfully, wilfully and knowingly.

13 And you remember the definition of those words.
14 That simply means, very succinctly put, against the federal
15 law, voluntarily, not because of mistake or in good faith
16 and with a bad motive.

17 Then it goes on to say, did combine, conspire,
18 confederate and agree, and that's the conspiracy charge
19 that I defined for you and a conspiracy has been defined--
20 acted together with each other and with other persons to the
21 grand jury unknown to commit offenses against the United
22 States, namely, violations of Sections 2313 and 2313 Title
23 18 and I have described those sections to you.

24 The conspiracy charge is the first paragraph.
25 The other paragraphs which follow that which are 2, 3 and 4

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1 melt 15

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2 are the means that the government says that the defendants
3 used to accomplish this conspiracy.

4 The government need not prove all of the means.
5 If the government proves one of the three means that are
6 named in here and you can read them and I will go over them
7 a little with you, then if all twelve of you agree on the
8 same means, then that would satisfy that portion of the
9 requirement.

10 Now, the second paragraph which is the first means
11 used is talking about transportation. The third means is
12 talking about the concealing part, which is 2313
13 And the fourth one is the altering of cars and it essentially
14 concerns portions of what would be 2313, and if anyone of
15 those means has been accomplished or that was part of the
16 agreement then of course that element would be satisfied.
17 It doesn't have to be accomplished. It doesn't have to be
18 successful, a conspiracy, in order to be convicted of a
19 conspiracy because that's separate and apart from the law
20 itself.

21 Congress has considered that the agreement of
22 people to commit an offense against the United States where
23 they combine together and become more in number, that is of
24 sufficient importance to constitute a federal crime. They
25 made that separate and apart. It doesn't make a bit of

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1 melt 16

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2 difference whether they ever succeeded in actually stealing
3 a car or bringing it down. If they agreed to do it and
4 they performed an overt act in furtherance of it, then the
5 conspiracy violation is completed at that time regardless of
6 whether it succeeds or not.

7 Then in order for it to be concluded, however,
8 an overt act must be done by one of the co-conspirators,
9 if you recall.

10 Then they name a number of overt acts which are
11 five in number.

12 Now, the government doesn't have to prove all of
13 them. It can prove any one of them. As long as you are all
14 satisfied, all twelve of you, as to any particular one, then
15 of course that would be sufficient.

16 Now, in this particular area, when you get through
17 with the overt acts and you don't have to vote on any particu
18 lar overt acts. What you do is vote on the whole Count 1
19 as a conspiracy, either you find that they committed the
20 conspiracy or they have not. You don't have to vote on the
21 overt acts or you don't have to vote on the means.

22 Is that clear to you, Madam Forelady?

23 THE FORELADY: Yes.

24 THE COURT: All right.

25 Now, I made distinctions before, earlier, when I

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1 melt 17

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2 I was talking to you about the traffic light. In this
3 particular charge, unless the defendants knew that the cars
4 were moving in interstate commerce, as I have defined it to
5 you, they may not be convicted of this conspiracy charge,
6 even though it is possible for you to convict them under
7 the substantive charges, the other counts that are in the
8 indictment. They must know that in order to satisfy the
9 legal elements of this particular crime.

10 So that if you find that the government has
11 proven all these elements by credible evidence beyond a
12 reasonable doubt, then you should convict the defendant of
13 the charge of conspiracy, particular defendant you are
14 considering.

15 Don't lump them all up together; consider them
16 separately.

17 If you find that the government has failed to
18 prove any one or more or all of these elements which I have
19 just described to you, then it is your obligation to acquit
20 the defendant that you have under consideration.

21 We now come to the even-numbered counts, and
22 that is the transportation count, that the vehicles were
23 transported. I will just take one representative count
24 because the same applies to the other three representative
25 counts.

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007-4500

2 In other words, 2, 4, 6 and 8 have the same elements
3 of the law. The difference about them is the car involved
4 and the dates involved. But the elements of the law are the
5 same, so you will go through each one of them in the same
6 fashion and make a determination as to the defendants involved
7 in that particular count as to his guilt or innocence, so we
8 start with number 2.

9 Now, all these even-numbered counts, you will see
10 it on there, involve Lecleres. The other defendants are not
11 involved in the even-numbered counts; the transportation of
12 the cars from Bridgeport or Massachusetts in one case, into
13 New York. That only involves Lecleres, and it is not the
14 government's position that he physically did that himself,
15 it is the government's position that he aided and abetted
16 in that he commanded these people to bring the cars down and
17 therefore he is guilty of the charges in these even-numbered
18 counts.

19 So what do you have to find then in these even-
20 numbered counts? It starts:

21 On or about -- the first car which involves the
22 Cadillac, the 1964 Cadillac, it says:

23 "On or about November 19, 1972," so that you have
24 to find that the transportation took place at or about that
25 time. That doesn't mean the exact date. It means on or

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1 melt 19

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2 about. Reasonably within that time.

3 "In the Southern District of New York"-- and
4 that I have taken judicial notice that that garage down on
5 Wales Avenue in the Bronx is in the Southern District of
6 New York -- "the defendant Paito"-- who is the defendant
7 Lecleres, "--unlawfully, wilfully and knowingly"-- and here
8 again those words mean exactly what I defined before --
9 --"did transport" -- and transport has the same meaning that
10 it has in ordinary use-- take from one place to another --
11 --"in interstate commerce"-- from Connecticut to New York, and
12 of course I have taken judicial notice that the two are
13 separate states and therefore that commerce is interstate--
14 "a stolen motor vehicle namely a 1964 Cadillac" -- and you
15 have to find that it was stolen and he, the owner, came in
16 and testified to that, you will recall-- "knowing the same
17 to have been stolen."

18 Now, that in this particular case is an element.
19 He must know that the car is stolen and you will have to
20 evaluate the evidence.

21 The government, of course, contends that he
22 instructed these people to go up there, to go up to
23 Connecticut, sometimes he would point the cars out, some-
24 times he would not and in this particular case you will recall
25 the testimony about this 1964 Cadillac, what happened at

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1 melt 19A

2 that time.

3 As far as the conspiracy is concerned, you
4 remember all the events that happened. As far as this
5 particular count is concerned, you consider only what
6 happened to the '64 Cadillac.

7 (Continued on next page.)

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a.m. 1
Charge 2

rdlt 1

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Now, did he give orders for that car to be taken?

There is no charge that he drove it down himself. There is no charge that he received it manually, physically; but there is a charge that he aided and abetted. You will have to make a determination on that.

Now, if he did in fact give an order to a man to go to Connecticut and bring that car to New York, then, of course, he would have to know it was stolen because that's what he was directing him to do. This is a big issue in the case.

He denies it. He took the stand. He has a right to take the stand. He denies it. The witness who made this particular -- who got this particular car says he was told to do so by Paito and delivered it to him. You will have to make a judgment on that as far as that is concerned.

The same applies to Count 4. That involves a Cougar also from Connecticut, and all those elements would have to be proven in the same way.

Count 6, that involves the car from Massachusetts, the Dodge Swinger. The same elements will have to be examined by you in the same way.

Number 8, you will see on that diagram there, that involves the Thunderbird, the Ford Thunderbird.

So you will examine the background of each one of

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2 these vehicles and the testimony that has been adduced during
3 the time that these particular vehicles were discussed, and
4 if you find that the government has proven each one of the
5 elements by credible evidence, beyond a reasonable doubt,
6 it is your obligation to convict the defendants.

7 On the other hand, if the government has failed
8 to prove any one or more or all of the elements in these
9 even-numbered counts, then it is your obligation to acquit
10 the defendant Lecleres in the count which you have found that
11 the government has not satisfied its proof.

12 The odd-numbered counts concern what has been
13 used in shorthand here as "concealment," although it includes
14 various other things as I have indicated to you before. It
15 includes receiving, storing, bartering, selling or disposing
16 of any motor vehicle.

17 Of course, the government doesn't have to prove
18 all of those. It can prove any one or more of them.

19 Now, as far as the odd-numbered counts are
20 concerned; we will go through the third count and that applies
21 the same rules apply as to 5, 7 and 9.

22 The first the government would have to prove in
23 number 3 is that it happened on or about October 19, 1972.
24 You will notice these counts are paired. 2 is paired with 3
25 because it involves the same vehicle. One deals with

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1 rdlt 3

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2 transportation, the other deals with concealment; two
3 different sections.

4 So the date has to be the same as to both of
5 them, except that in the concealment it may continue on
6 from the day the car was transported to a further date and the
7 dates are named in the indictment.

8 You will have to find that the concealment was
9 within that period.

10 For example, in the first count, if you look at
11 that chart up there, Count 3 says that from November 19,
12 1972 -- that's the date the car was stolen -- through or
13 on or about March 15, 1973. So that the concealment must be
14 within that period.

15 When you go to Count 5, there is a different
16 period. That period is from February 6th, as you will see
17 in the diagram up there, 1973, to about April 17, 1973,
18 and that must be within that period.

19 You go to Count number 7, and you see the period
20 there is from March 14, 1972 to April 15, 1972.

21 In Count 9 the period is from the date that it
22 was stolen, namely December 30, 1972 until August 13, 1973.

23 So as you continue on to consider the odd-numbered
24 counts it must be on those dates.

25 The defendant Lecleres is charged in the third

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1 rdlit 4

2 count together with Ortas, so that as far as Count 3 is
3 concerned you have to make a judgment about Lecleres and
4 Ortas, whether they were guilty of that particular crime.
5 Here they must act unlawfully, wilfully, knowingly and
6 wilfully, and I have defined those for you before.

7 They must either have received, concealed, stored
8 a stolen vehicle, because that is the charge in here. Any
9 one of the three of them or all of them or any combination
10 of them. And the vehicle involved is a Cadillac, 1964
11 Cadillac in Count 3.

12 Now, you may say, well, somebody said or one of
13 the lawyers said they didn't put it in a tunnel or a bag
14 or a suitcase, some expression. Well, concealment doesn't
15 only mean that you put it in that kind of a situation.

16 If you have a motor vehicle, this particular
17 motor vehicle for example, and you change the vin numbers
18 on it and you put another vin number on it so if anybody
19 looks at it they think they are looking at a legal car when
20 in fact it is a stolen car, that's concealment because you
21 can't tell by looking at those numbers that that car was in
22 fact stolen, so you are really concealing the identity of
23 the car. That is the concept of concealing in this
24 particular case.

25 So that you will have to determine from the

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1 rdlt 5

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2 evidence in the case yourself whether in fact these numbers
3 were changed, and if they were changed, whether that resulted
4 in a concealment.

5 Then the particular motor vehicle in question is
6 the Cadillac, 1964, and the fact that it was part of and
7 moving in interstate commerce, I have already indicated to
8 you what that is and you know the definition of that, moving
9 in interstate commerce.

10 Knowing the same to have been stolen. Here
11 again, the defendant must know that it was stolen. The
12 government's position, of course, is that he gave directions
13 for this and therefore he must have known that it was stolen.
14 He sent them up there, sometimes pointed out cars. In this
15 particular case I don't remember the facts. You will have to
16 recall them and figure out what part the defendant Lecleres
17 had in this and what part the defendant Ortas had in it,
18 and then come to a determination as to whether or not they
19 knew, in fact, that the car was stolen.

20 So consider each defendant separately, come to
21 a separate judgment on them as to Count 3.

22 As to Count 5, I have already dismissed the
23 charges as against Garcia and Baez. So the only one that you
24 consider on Count 5 is Lecleres.

25 As to Count 7 we have Lecleres, Baez and Garcia

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2 as defendants, and you will consider each one of them
3 separately and make a determination going through the elements
4 just as I have described to you on the other odd-numbered
5 counts. That also applies to Count number 9, which charges
6 Lecleres, Baez, Garcia and Ortas. That charges all four
7 defendants.

8 So that you have two counts here which charge all
9 the defendants; namely, the first and the last, the conspiracy
10 count and Count number 9.

11 And you will go through the elements in that
12 particular count, treating each one separately for the pur-
13 pose of making a judgment. Then if you find that the govern-
14 ment has proven one or more or all of these elements by
15 credible evidence beyond a reasonable doubt you should con-
16 vict the defendant you are considering where you find that
17 to be the case.

18 If you find the government has not proven any one
19 or more or all of the elements as to the particular crime
20 as to the defendant you have under consideration, then you
21 must acquit the defendant.

22 That is generally the way you go through the
23 indictment.

24 And I only have a few more words to say to you,
25 and that concerns things that have nothing to do with what

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1 rdlt 7

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2 should affect your judgment.

3 For example, sympathy or bias. That has nothing
4 to do with finding the facts in this case. We may feel sorry
5 for some of these people and we may be mad at some of these
6 people. It is a judgment a human being makes when he hears
7 something, talks to them or observes them. That kind of
8 thinking on your part should not be part of coming to a
9 judgment as to whether they are guilty or innocent.

10 Divorce your minds from any thought of sympathy
11 or bias. Decide this case without fear or favor to anyone.
12 Decide it as your conscience dictates.

13 Punishment, if it becomes necessary in this
14 case, is not the function of the jury. It is the function
15 of the Court and it cannot possibly help you in determining
16 what the facts are in the case, so you will not consider
17 what, if any, punishment could be visited upon anybody.

18 Madam Forelady, your verdict must be unanimous
19 as to each of these counts, each one of them. There is no
20 quotient verdict in a criminal case in this court. All
21 twelve of you must agree, and you will indicate alongside of
22 each of these counts the disposition as to each one so you
23 will be able to report it to the court clerk when you come in.

24 Now, consider the totality of the evidence in the
25 case and listen to your neighbor and don't make up your mind

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1 rdlt 8

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2 as soon as you go in there. Start to think about the case
3 and don't come to a conclusion before you even think about
4 it. Just discuss the case and then as you get along you will
5 finally come to a point where you are able to make a con-
6 clusion and that should be in accord with your conscience.

7 The verdict will be reported by the forelady and
8 in addition to that she is also the one who communicates
9 with the Court in writing, if anything arises.

10 If anybody wants any testimony read or anything
11 else comes up which the Court can assist you with, the
12 forelady will write the note out, she will sign it, put it
13 in a sealed envelope, and give it to the marshal who will then
14 give it to me and I will then consider it.

15 If for any reason you come back and you are
16 divided in some way about how you feel about the case, do
17 not report any divisions. In other words, the only time you
18 report is at the end when you all agree as to what you agree
19 upon. Do not report what is happening inbetween.

20 As far as the conspiracy count is concerned, you
21 don't report on any parts of it. The only thing you report
22 on is whether they are guilty or not guilty of the conspiracy
23 charge. You don't have anything to do with the means or the
24 overt acts or anything like that to report what your thinking
25 was on that. You must be satisfied, as I have indicated

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2 before, but you only report the general verdict of guilty
3 or not guilty on the conspiracy.

4 You don't have to report as to the overt acts,
5 which ones you considered, and so forth.

6 As I said before, I have on last time to talk
7 to the lawyers and I will do that now. If you will excuse
8 me, we will then continue on, and at which point the case
9 will be turned over to you.

10 (At the side bar.)

11 THE COURT: We will start in with Lecleres.

12 MR. GARCIA: Just your opinion on here as to the
13 5th Count, which was dismissed as to the two persons, Baez
14 and Garcia. They were dismissed as a matter of law, I
15 understand that. Do you feel that it could be said to the
16 jury that it is not your opinion that he should stand --
17 that Lecleres is guilty but they should decide it on the
18 facts?

19 THE COURT: I think I said that. You can note
20 that as an exception. I will note it.

21 Any other exceptions?

22 MR. GARCIA: That's all.

23 MR. AIDALA: Next would be Baez.

24 THE COURT: Mr. Aidala.

25 MR. AIDALA: I object to that part of your charge

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~~APP~~ US COURT OF APPEALS 2nd Circuit

Index No.

USA,

Appellee,

against

Affidavit of Personal Service

LE CLERES,

Appellant.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York 5
That on the 2nd day of January 1974 at

Foley Square, New York

deponent served the annexed

Appendix

upon

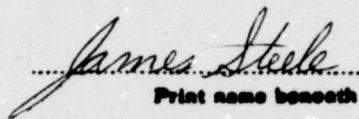
Paul J. Curran

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 2nd
day of January 1974

Print name beneath signature

JAMES STEELE



ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418000
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975